

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 75

Introduced By: Hudkins, 21;
Read first time: January 5, 2007
Committee: Judiciary

A BILL

1 FOR AN ACT relating to juveniles; to amend sections 43-254 and
2 43-283.01, Reissue Revised Statutes of Nebraska, and section
3 43-247, Revised Statutes Cumulative Supplement, 2006; to
4 provide powers and duties to the juvenile court regarding
5 the placement and custody of juveniles as prescribed; to
6 harmonize provisions; and to repeal the original sections.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 43-247 Revised Statutes Cumulative
2 Supplement, 2006, is amended to read:

3 43-247. The juvenile court shall have exclusive original
4 jurisdiction as to any juvenile defined in subdivision (1) of this
5 section who is under the age of sixteen, as to any juvenile defined in
6 subdivision (3) of this section, and as to the parties and proceedings
7 provided in subdivisions (5), (6), and (8) of this section. As used in
8 this section, all references to the juvenile's age shall be the age at
9 the time the act which occasioned the juvenile court action occurred.
10 The juvenile court shall have concurrent original jurisdiction with
11 the district court as to any juvenile defined in subdivision (2) of
12 this section. The juvenile court shall have concurrent original
13 jurisdiction with the district court and county court as to any
14 juvenile defined in subdivision (1) of this section who is age sixteen
15 or seventeen, any juvenile defined in subdivision (4) of this section,
16 and any proceeding under subdivision (7) or (11) of this section. The
17 juvenile court shall have concurrent original jurisdiction with the
18 county court as to any proceeding under subdivision (9) or (10) of
19 this section. Notwithstanding any disposition entered by the juvenile
20 court under the Nebraska Juvenile Code, the juvenile court's
21 jurisdiction over any individual adjudged to be within the provisions
22 of this section shall continue until the individual reaches the age of
23 majority or the court otherwise discharges the individual from its
24 jurisdiction.

25 The juvenile court in each county as herein provided shall
26 have jurisdiction of:

27 (1) Any juvenile who has committed an act other than a

1 traffic offense which would constitute a misdemeanor or an infraction
2 under the laws of this state, or violation of a city or village
3 ordinance;

4 (2) Any juvenile who has committed an act which would
5 constitute a felony under the laws of this state;

6 (3) Any juvenile (a) who is homeless or destitute, or
7 without proper support through no fault of his or her parent,
8 guardian, or custodian; who is abandoned by his or her parent,
9 guardian, or custodian; who lacks proper parental care by reason of
10 the fault or habits of his or her parent, guardian, or custodian;
11 whose parent, guardian, or custodian neglects or refuses to provide
12 proper or necessary subsistence, education, or other care necessary
13 for the health, morals, or well-being of such juvenile; whose parent,
14 guardian, or custodian is unable to provide or neglects or refuses to
15 provide special care made necessary by the mental condition of the
16 juvenile; or who is in a situation or engages in an occupation
17 dangerous to life or limb or injurious to the health or morals of such
18 juvenile, (b) who, by reason of being wayward or habitually
19 disobedient, is uncontrolled by his or her parent, guardian, or
20 custodian; who deports himself or herself so as to injure or endanger
21 seriously the morals or health of himself, herself, or others; or who
22 is habitually truant from home or school, or (c) who is mentally ill
23 and dangerous as defined in section 71-908;

24 (4) Any juvenile who has committed an act which would
25 constitute a traffic offense as defined in section 43-245;

26 (5) The parent, guardian, or custodian who has custody of
27 any juvenile described in this section;

1 (6) The proceedings for termination of parental rights as
2 provided in the Nebraska Juvenile Code;

3 (7) The proceedings for termination of parental rights as
4 provided in section 42-364;

5 (8) Any juvenile who has been voluntarily relinquished,
6 pursuant to section 43-106.01, to the Department of Health and Human
7 Services or any child placement agency licensed by the Department of
8 Health and Human Services;

9 (9) Any juvenile who was a ward of the juvenile court at the
10 inception of his or her guardianship and whose guardianship has been
11 disrupted or terminated;

12 (10) The adoption or guardianship proceedings for a child
13 over which the juvenile court already has jurisdiction under another
14 provision of the Nebraska Juvenile Code; and

15 (11) The paternity determination for a child over which the
16 juvenile court already has jurisdiction.

17 In a proceeding initiated under subdivision (3)(a) of this
18 section, the court shall assume jurisdiction of any case in which a
19 previous order exists in either the district or county court
20 determining the custody of the juvenile. In a finding that the
21 juvenile falls under subdivision (3)(a) of this section, the juvenile
22 court shall request from the district or county court the file
23 containing the order of custody with respect to the juvenile.
24 Notwithstanding any other provision of law, if in such juvenile
25 proceeding the custodial parent is alleged to have abused or
26 neglected the juvenile, the court shall immediately order the
27 juvenile placed with the noncustodial parent, unless there is a

1 showing by a preponderance of the evidence that the noncustodial
2 parent is unfit and such placement would not be in the best interests
3 of the juvenile. The court shall also modify the prior custodial
4 order to reflect the change in custody and shall make any other
5 orders in both cases with respect to protection of the juvenile and
6 the parenting rights of the custodial parent pending the adjudication
7 of the juvenile court matter. At the conclusion of the juvenile
8 matter, the juvenile court shall enter an order consistent with the
9 results of the juvenile matter in the prior custodial matter, setting
10 forth the terms of custody and parenting time by the parents of the
11 juvenile. If a parent's rights are terminated, such order shall
12 reflect that fact and shall specifically identify the loss of rights
13 by the parent.

14 Notwithstanding the provisions of the Nebraska Juvenile
15 Code, the determination of jurisdiction over any Indian child as
16 defined in section 43-1503 shall be subject to the Nebraska Indian
17 Child Welfare Act; and the district court shall have exclusive
18 jurisdiction in proceedings brought pursuant to section 71-510.

19 Sec. 2. Section 43-254 Reissue Revised Statutes of Nebraska,
20 is amended to read:

21 43-254. Pending the adjudication of any case, if it appears
22 that the need for placement or further detention exists, the juvenile
23 may be (1) placed or detained a reasonable period of time on order of
24 the court in the temporary custody of either the person having charge
25 of the juvenile or some other suitable person, (2) kept in some
26 suitable place provided by the city or county authorities, (3) placed
27 in any proper and accredited charitable institution, (4) placed in a

1 state institution, except any adult correctional facility, when proper
2 facilities are available and the only local facility is a city or
3 county jail, at the expense of the committing county on a per diem
4 basis as determined from time to time by the head of the particular
5 institution, or (5) placed in the temporary care and custody of the
6 Department of Health and Human Services when it does not appear that
7 there is any need for secure detention. The court may assess the cost
8 of such placement or detention in whole or in part to the parent of
9 the juvenile as provided in section 43-290.

10 If a juvenile has been removed from his or her parent,
11 guardian, or custodian pursuant to subdivision (3) of section 43-248,
12 the court may enter an order continuing detention or placement upon a
13 written determination that continuation of the juvenile in his or her
14 home would be contrary to the health, safety, or welfare of such
15 juvenile and that reasonable efforts were made to preserve and reunify
16 the family if required under subsections (1) through (4) of section
17 43-283.01.

18 In all placement decisions in cases in which there is an
19 order determining custody of the juvenile, the juvenile court shall
20 not place the juvenile with a parent whose prior acts under
21 subdivision (3)(a) of section 43-247 have brought the juvenile before
22 the court regardless of the prior court order.

23 Sec. 3. Section 43-283.01 Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 43-283.01. (1) In determining whether reasonable efforts
26 have been made to preserve and reunify the family and in making such
27 reasonable efforts, the juvenile's health and safety are the paramount

1 concern.

2 (2) Except as provided in subsection (4) of this section,
3 reasonable efforts shall be made to preserve and reunify families
4 prior to the placement of a juvenile in foster care to prevent or
5 eliminate the need for removing the juvenile from the juvenile's home
6 and to make it possible for a juvenile to safely return to the
7 juvenile's home.

8 (3) If continuation of reasonable efforts to preserve and
9 reunify the family is determined to be inconsistent with the
10 permanency plan determined for the juvenile in accordance with a
11 permanency hearing under section 43-1312, efforts shall be made to
12 place the juvenile in a timely manner in accordance with the
13 permanency plan and to complete whatever steps are necessary to
14 finalize the permanent placement of the juvenile.

15 (4) Reasonable efforts to preserve and reunify the family
16 are not required if a court of competent jurisdiction has determined
17 that:

18 (a) The parent of the juvenile has subjected the juvenile to
19 aggravated circumstances, including, but not limited to, abandonment,
20 torture, chronic abuse, or sexual abuse;

21 (b) The parent of the juvenile has (i) committed first or
22 second degree murder to another child of the parent, (ii) committed
23 voluntary manslaughter to another child of the parent, (iii) aided or
24 abetted, attempted, conspired, or solicited to commit murder, or aided
25 or abetted voluntary manslaughter of the juvenile or another child of
26 the parent, or (iv) committed a felony assault which results in
27 serious bodily injury to the juvenile or another minor child of the

1 parent; ~~or~~

2 (c) The parental rights of the parent to a sibling of the
3 juvenile have been terminated involuntarily; or -

4 (d) The child is placed with a parent who is not the
5 subject of the juvenile petition and the juvenile court has modified
6 the custody order to name a new custodial parent.

7 (5) If reasonable efforts to preserve and reunify the family
8 are not required because of a court determination made under
9 subsection (4) of this section, a permanency hearing, as provided in
10 section 43-1312, shall be held for the juvenile within thirty days
11 after the determination, reasonable efforts shall be made to place the
12 juvenile in a timely manner in accordance with the permanency plan,
13 and whatever steps are necessary to finalize the permanent placement
14 of the juvenile shall be made.

15 (6) Reasonable efforts to place a juvenile for adoption or
16 with a guardian may be made concurrently with reasonable efforts to
17 preserve and reunify the family, but priority shall be given to
18 preserving and reunifying the family as provided in this section.

19 Sec. 4. Original sections 43-254 and 43-283.01, Reissue
20 Revised Statutes of Nebraska, and section 43-247, Revised Statutes
21 Cumulative Supplement, 2006, are repealed.